



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

January 27, 1994

Ms. Susan G. Spinks  
Assistant University Counsel  
University of Houston System  
1600 Smith, Suite 3400  
Houston, Texas 77002

OR94-037

Dear Ms. Spinks:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code (former V.T.C.S. article 6252-17a).<sup>1</sup> Your request was assigned ID# 18743.

The University of Houston System (the "university") received two requests from the same requestor for information about certain debts that university faculty members and employees owe the university. The first request was for five items: 1) documents concerning checks to the university from accounts with insufficient funds, including checks written by faculty or staff; 2) correspondence between the university and the bad check writer; 3) correspondence between the university and the Harris County district attorney's hot check division; 4) documents about debts owed for parking tickets and tow charges, including information about fines owed by faculty or staff; 5) all correspondence between the university and such debtors.

In response to the first request, you released the following items of information: a comparative schedule of accounts receivable for fiscal years 1981 through 1992; information about procedures for billing and collections; a form letter sent to employees with debts of over \$500; information about check fraud procedures used by Harris County District Attorney's Office; a sample of a printout of the account position of an employee with student-related debt, where the debt is more than \$500; a sample of a computer printout of the account position of an employee with no student record, with a debt of

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<sup>1</sup>The Seventy-third Legislature repealed article 6252-17a, V.T.C.S. Acts 1993, 73d Leg., ch. 268, § 46, at 988. The Open Records Act is now codified in the Government Code at chapter 552. *Id.* § 1. The codification of the Open Records Act in the Government Code is a nonsubstantive revision. *Id.* § 47.

\$500 or more; a sample of the account position of an employee with no student record for whom a check was returned for insufficient funds; a sample of the account position of employees who are or were students for whom a check was returned for insufficient funds; a summary of current employee delinquent accounts as of January 1, 1993; a list of debt priorities; and a list of employees who have written the university bad checks. You withheld all student names and identifying information that appear on the released information in compliance with the Family Educational Rights and Privacy Act, ("FERPA"), 20 U.S.C. § 1232g.

The second request is for five items: 1) all weekly bulletins submitted by Terry Ondreyka to Dennis Boyd since January 1, 1991; 2) all documents or lists of employee debt for Dennis Boyd since October 1, 1992; 3) all memoranda between Dennis Boyd and Terry Ondreyka since January 1, 1991, relating to student or employee debt or collection services; 4) master check lists generated by the university business office in December, 1992 and January, 1993; 5) all written correspondence relating to filing criminal charges for the issuance of a bad check since January 1, 1989.

With regard to the second request, you say you will provide item one, the current month for item four<sup>2</sup> and the lists in item two. With regard to item two, you assert that you must delete all identifying information on those records of those debtors who are or were students. You say you are searching for the memorandum for item three and contend that should it exist, you must delete under FERPA all information that identifies a student. With regard to item five, you say you will release inter-office memoranda about hot check writers and again contend that you must withhold under FERPA information in the memoranda that identifies a student.

With regard to both requests for information about debts owed the university, you ask whether you have met your obligations to the requestor under the Open Records Act. You also ask whether FERPA prohibits the disclosure of any information that identifies students of the university. Finally, with regard to a February 11, 1992, memorandum from Carolyn Williams, you ask whether you may withhold directory information about an employee who has requested that you not release such information pursuant to former section 3A(a) of the Open Records Act (now found at section 552.024 of the Government Code).

The Open Records Act does not require a governmental body to create new information or prepare information in a particular form. Open Records Decision Nos. 572 (1990); 467 (1987). However, a governmental body is obligated to make a good faith effort to relate a request to information which it holds. Open Records Decision No. 561 (1990) at 8. You say that the university's accounting system cannot provide the informa-

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<sup>2</sup>You say that the master check lists which the university business office generates are updated on the computer each month and that the hard copies are not generally saved. You say that it is therefore unlikely that you have a master check list for any month other than the current one.

tion in the form requested. You say that the accounting system tracks debtors, without categorizing debtors as students or non-students.

You also say that while the system tracks debts from returned checks, it does not do so for other debts. You say you cannot provide the requestor with a list of employees with parking violation debts. Thus, as mentioned above, you provided computer print-outs of the account position of individuals which contain information about *all* of the debts an individual owes the university.

You do not raise any exceptions to the release of copies of the bad checks, the parking tickets or the tow charges, which the requestor sought in his initial request. As you raise no exception to their release, they are public information and must be released, with one exception: you must delete information which identifies a student which is subject to FERPA, as we explain below.<sup>3</sup>

We conclude that by providing the requestor with the information you have already given him in response to the first request, the information you say you will provide him in response to the second request, as well as the copies of the checks, parking tickets and tow charges, you will be in compliance with the Open Records Act.<sup>4</sup> However, all of the released information is subject to FERPA.

Section 552.026 of the Government Code (former section 14(e) of the Open Records Act) incorporates FERPA and provides that:

This chapter does not require the release of information contained in education records of an educational agency or institution, except in conformity with the Family Educational Rights and Privacy Act of 1974, Sec. 513, Pub. L. No. 93-380, 20 U.S.C. Sec. 1232g.

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<sup>3</sup>With regard to the parking tickets and tow charges, information responsive to item 4 in the first request and possibly item 2 of the second request, we note that, effective July 23, 1991, FERPA was amended so that "the term 'education records' does not include (ii) records maintained by a law enforcement unit of the educational agency or institution that were created by that law enforcement unit for the purpose of law enforcement." Higher Education Amendments of 1992, Pub. L. No. 102-325, tit. XV, pt. H, § 1555(a), 106 Stat. 448 (July 23, 1992) (to be codified at 20 U.S.C. § 1232g(a)(4)(B)(ii)). This amendment applies to all university campus police department records "maintained" after July 23, 1992. Open Records Decision No. 612 (1993). Thus, information about towing charges and parking violations maintained by the university police department are not education records for the purposes of FERPA; such information is not excepted from required public disclosure by section 552.026 of the Government Code. *See id.*

<sup>4</sup>With regard to two items sought in the first request, correspondence between check writers and the university, and correspondence between the university and the Harris County District Attorney's Office, we assume that you will provide copies of the correspondence itself, as requested, rather than copies of form letters and forms.

FERPA provides that no federal funds shall be made available

to any educational agency or institution which has a policy or practice of permitting the release of education records (or personally identifiable information contained therein . . . ) of students without the written consent of their parents.

20 U.S.C. § 1232g(b)(1). When a student has attained 18 years of age, or is attending an institution of post-secondary education, the education agency or institution must obtain the consent of the student before releasing education records. 20 U.S.C. § 1232g(d).

Under FERPA, "education records" means "those records, files, documents, and other materials which contain information directly related to a student and which are maintained by an educational agency or institution or by a person acting for such agency or institution." 20 U.S.C. § 1232g(a)(4)(A). Prior decisions of this office have found that information about various student financial transactions with an educational institution is information directly related to a student and therefore "education records" subject to FERPA. See Open Records Decision Nos. 193 (1978) (report of accident insurance claims paid to students); 151 (1977) (list of former university students credited with funds remaining in their general property deposit). We conclude that information about all debts owed the university by employees who are or were university students is "information directly related to a student" and therefore "education records" subject to FERPA and section 552.026.<sup>5</sup>

However, section 552.026 may not be used to withhold an entire document; the university must delete information only to the extent "reasonable and necessary to avoid personally identifying a student." Open Records Decision No. 332 (1982). Thus, you must withhold from required public disclosure only information which identifies a student.<sup>6</sup>

Section 552.024 of the Government Code (former section 3A of the Open Records Act) establishes the procedure by which a public employee may have his or her home

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<sup>5</sup> Additionally, section (b)(1)(D) of FERPA specifically restricts an educational institution from disclosing information that identifies a student who receives financial aid. See Open Records Decision No. 83 (1975) (names of students on scholarship, grants and salaries). Attachment "4e," the representative sample of a computer printout of the debts of an employee with student-related debt, contains information about tuition loans. This loan information constitutes financial aid information within the meaning of section (b)(1)(D) of FERPA.

<sup>6</sup> You inform us that your accounting system cannot distinguish the debts of student-employees incurred while a student, from debts incurred while not a student. Under FERPA, "education records" includes only information regarding an individual that relates to his activities while a student. Open Records Decision No. 539 (1990). However, it is not necessary that you make this distinction, since under FERPA, only the information which identifies a student, rather than the information which constitutes an "education record," is deleted.

address and telephone number kept confidential. Before a governmental body may withhold employee addresses and telephone numbers, section 552.024(b) imposes a condition that the employee must designate in writing not later than 14 days after the commencement or termination of his employment that his choice is not to allow public access. *See* Open Records Decision No. 530 (1989) at 3. Section 552.024(e), however, permits an employee or former employee to change the designation authorized in section 552.024(b) by so stating in writing to the governmental body's personnel officer. *See id.* at 3-4. The designation of a public employee's directory information as public is determined as of the time the request for the information was made. *See id.* Thus, if the addresses on the February 11, 1992, memorandum from Carolyn Williams are the addresses of employees or former employees who at the time of this open records request, had requested in writing that the university's main personnel officer not release their addresses to the public, you must withhold those addresses pursuant to section 552.024.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

  
Rebecca L. Payne  
Section Chief  
Open Government Section

RLP/rho

Ref: ID# 18743  
ID# 18748

Enclosures: Submitted documents

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